



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

May 23, 1996

The Honorable Kenny Marchant
Chair
Committee on Financial Institutions
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-057

Re: Whether a municipal hospital authority is authorized under chapter 262 of the Health and Safety Code to lease real property to a private entity to operate a bank, restaurant, or drugstore (ID# 38587)

Dear Representative Marchant:

You ask whether a municipal hospital authority is authorized to lease land to a private entity to operate a bank, restaurant, or drugstore. You state that the municipal hospital authority at issue is created under chapter 262 of the Health and Safety Code.

The powers and duties of a municipal hospital authority are set forth in sections 262.021 through 262.036 of the Health and Safety Code. Section 262.022 provides that a board of a municipal hospital authority may "lease a hospital or part of a hospital, owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee." Chapter 262 defines the term "hospital" by reference to the definition of "hospital project" in section 223.002 of the Health and Safety Code¹:

"Hospital project" means existing or future real, personal, or mixed property, or an interest in that property, other than a nursing home licensed or required to be licensed under the authority of this state, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be necessary for medical care, research, training, or teaching in this state. A hospital project may include one or more of the following properties if found by the governing body of an issuer to be necessary or convenient for the project:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

¹See Health & Safety Code § 262.002(6) ("In this chapter . . . '[h]ospital' means a hospital project as defined by Section 223.002.").

(B) a structure suitable for use as:

(i) a hospital, clinic, health facility, extended care facility, outpatient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(ii) a multiunit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(iii) a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment; or

(iv) a medical or dental research facility, medical or dental training facility, or another facility used in the education or training of health care personnel;

(C) property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(D) any other structure, facility, or equipment related or essential to the operation of a health facility or system.

Health & Safety Code § 223.002(4).

A municipal hospital authority “may exercise only such powers as have been expressly delegated to it by the Legislature, or which exist by clear and unquestioned implication.” *Mascarenhas v. Meridian Hosp. Auth.*, 560 F.2d 683, 685 & n.6 (5th Cir. 1977) (quoting *Tri-City Fresh Water Supply District No. 2 v. Mann*, 142 S.W.2d 945, 946 (1940)). You argue that it is “within the incidental powers of the Authority to lease land to private parties for . . . non-hospital purposes so long as the lease of the land is found by the governing body of the Authority to be necessary or convenient for operations.” We disagree with this formulation.

Chapter 262 provides that a municipal hospital authority may lease a hospital “as a hospital.” Health & Safety Code § 262.022(c). A municipal hospital authority is not expressly authorized to lease property for other, nonhospital purposes. Given a municipal hospital authority’s express grant of authority to lease a hospital “as a hospital” in section 262.022(c) and a municipal hospital authority’s express authority to sell real property that

the board determines is not needed for hospital purposes in section 262.031, we do not believe that authority to lease property for other, nonhospital purposes may be implied. Under chapter 262, however, the definition of hospital is quite broad. A hospital may include "any other structure, facility, or equipment related or essential to the operation of a health facility or system," *see id.* § 223.002(4)(D), if found by the board to be "necessary or convenient" for the hospital project, *see id.* § 223.002(4).

It is for the board to determine in the first instance whether a lease for a bank, restaurant, or drugstore "is related or essential to the operation of a health facility or system" and is "necessary or convenient" for the hospital, subject to review by a court. A board could decide, for example, that a lease for a restaurant is (1) related or essential to the operation of a health facility and (2) necessary or convenient for the hospital under this standard if the hospital lacks a cafeteria and the restaurant is necessary to serve the needs of hospital staff and visitors. We do not believe, however, that a lease for a bank, restaurant, or drugstore would satisfy this standard if, for example, the primary purpose of the lease is to generate revenue for the municipal hospital authority. A lease for the operation of such businesses primarily for financial profit is not "related to or essential to the operation of a health facility or system."


Finally, we also note that any lease entered into by a municipal hospital authority must comport with article III, section 52 of the Texas Constitution. The board must determine that the lease achieves a valid public purpose and includes sufficient controls to ensure that the public purpose is met. Attorney General Opinion H-966 (1977) at 2. The board must also determine that the municipal hospital authority will receive adequate consideration. *See* Attorney General Opinions DM-131 (1992) at 3, H-966 (1977) at 2, H-777 (1976) at 5 (relying upon *Sullivan v. Andrews County*, 517 S.W.2d 410, 413 (Tex. Civ. App.—El Paso 1974, writ ref'd n.r.e.)).²

²In determining whether consideration is adequate, the board might also want to consider the effect of a lease, if any, on the tax-exempt status of the municipal hospital authority's property. *See* Health & Safety Code § 262.004; *Grand Prairie Hosp. Auth. v. Dallas County Appraisal Dist.*, 730 S.W.2d 849 (Tex. App.—Dallas 1987, writ ref'd n.r.e.).

S U M M A R Y

Under chapter 262 of the Health and Safety Code, a municipal hospital authority may lease real property to a private entity to operate a bank, restaurant, or drugstore if the board determines that the establishment "is related or essential to the operation of a health facility or system" and is "necessary or convenient" for the hospital. The lease must also comport with article III, section 52 of the Texas Constitution.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee